## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF CALIFORNIA

ALTON KING,

VS.

Ш

VALLEY STATE PRISON, et al.,

Defendants.

Plaintiff,

## 1:20-cv-00024-DAD-GSA-PC

FINDINGS AND RECOMMENDATIONS, RECOMMENDING THAT THIS ACTION PROCEED ONLY AGAINST DEFENDANTS WARDEN RAYTHEL FISHER, JR., AND CULINARY STAFF MEMBER MOOSEBAUR FOR VIOLATION OF RLUIPA, VIOLATION OF THE FIRST AMENDMENT FREE EXERCISE CLAUSE, AND ADVERSE CONDITIONS OF CONFINEMENT IN VIOLATION OF THE EIGHTH AMENDMENT; AGAINST DEFENDANT WARDEN RAYTHEL FISHER, JR., FOR FAILURE TO PROTECT PLAINTIFF IN VIOLATION OF THE EIGHTH AMENDMENT; AND THAT ALL OTHER CLAIMS AND DEFENDANTS BE DISMISSED

**OBJECTIONS, IF ANY, DUE IN 14 DAYS** 

Plaintiff Alton King is a state prisoner proceeding *pro se* and *in forma pauperis* with this civil rights action pursuant to 42 U.S.C. § 1983. On December 26, 2019, fifteen plaintiffs, including Plaintiff Alton King, filed the Complaint commencing this action against Valley State Prison (VSP), et al., for subjecting them to adverse conditions of confinement in violation of the Eighth Amendment by serving substandard food in Kosher meals at VSP. (ECF No. 2.) On January 7, 2020, the court issued an order severing the fifteen plaintiffs' claims and opening new cases for individual plaintiffs. (ECF No. 1.) Each of the fifteen plaintiffs was ordered to file an

amended complaint in his own case within thirty days. (<u>Id.</u>) On February 13, 2020, Plaintiff filed the First Amended Complaint. (ECF No. 6.) 28 U.S.C. § 1915.

The First Amended Complaint names as defendants Valley State Prison (VSP), CDCR, Raythel Fisher, Jr. (Warden, VSP), C. Hernandez (Food Manager, CFM1), Mohktar (Food Administrator), Moosebaur (Culinary Supervisory Cook), Correctional Officer Keene, Anguiano (Culinary Supervisory Cook), Lucero (Culinary Supervisory Cook), John Doe #1 (Headquarter Community Resource Manager), John Doe #2 (Associate Director of the Division of Adult Institutions), John Doe #3 (CDCR Departmental Food Administrator), Anderson (Inmate), and J. Knight (Appeals Examiner) (collectively, "Defendants").

The court screened the First Amended Complaint and found that it states cognizable claims against Defendants Warden Raythel Fisher, Jr., and Culinary Staff Member Moosebaur for violation of RLUIPA, violation of the First Amendment Free Exercise Clause, and adverse conditions of confinement in violation of the Eighth Amendment; against Defendant Warden Raythel Fisher, Jr., for failure to protect Plaintiff in violation of the Eighth Amendment; but fails to state any other cognizable claims against any of the Defendants. On April 13, 2021, the court issued a screening order requiring Plaintiff to either (1) file a Second Amended Complaint, or (2) notify the court that he is willing to proceed only with the claims found cognizable by the court. (ECF No. 12.)

On May 18, 2021, Plaintiff notified the court that he is willing to proceed only with the claims found cognizable by the court. (ECF No. 13.)

## Based on the foregoing, it is **HEREBY RECOMMENDED** that:

- 1. This action proceed only on Plaintiff's claims against Defendants Warden Raythel Fisher, Jr., and Culinary Staff Member Moosebaur for violation of RLUIPA, violation of the First Amendment Free Exercise Clause, and adverse conditions of confinement in violation of the Eighth Amendment; against Defendant Warden Raythel Fisher, Jr., for failure to protect Plaintiff in violation of the Eighth Amendment;
- 2. That all remaining claims and defendants be dismissed from this action;

- 3. Plaintiff's claims for violation of the prison appeals process, verbal threats, state law claims, and equal protection be dismissed from this action based on Plaintiff's failure to state any claims upon which relief may be granted;
- 4. Defendants Valley State Prison (VSP), CDCR, C. Hernandez (Food Manager, CFM1), Mohktar (Food Administrator), Correctional Officer Keene, Lucero (Culinary Supervisory Cook), Culinary Staff member Anguiano, John Doe #1 (Headquarter Community Resource Manager), John Doe #2 (Associate Director of the Division of Adult Institutions), John Doe #3 (CDCR Departmental Food Administrator), Anderson (Inmate), and J. Knight (Appeals Examiner) be dismissed from this action based on Plaintiff's failure to state any claims against them upon which relief may be granted; and
- 5. This case be referred back to the Magistrate Judge for further proceedings, including initiation of service of process.

These Findings and Recommendations will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(l). Within fourteen (14) days after the date of service of these Findings and Recommendations, Plaintiff may file written objections with the Court. The document should be captioned "Objections to Magistrate Judge's Findings and Recommendations." Plaintiff is advised that failure to file objections within the specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

IT IS SO ORDERED.

Dated: **May 23, 2021** 

/s/ Gary S. Austin
UNITED STATES MAGISTRATE JUDGE

28